

48A C.J.S. Judges § 112

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

V. Discipline, Suspension, or Removal

C. Grounds

§ 112. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  11(4)

A judge may be disciplined or removed from office for particular grounds, such as conviction of crime, or on other grounds enumerated in the constitution or statute or compilations of standards or guidelines for judicial behavior.

The grounds enumerated in the constitution or statute for which a judge may be disciplined or removed from office are subject to strict construction¹ since they are quasipenal.² Except where standards of, and guidelines for, conduct of judges, may serve as grounds for discipline, there can be no removal except on the grounds enumerated in the constitution and statutes.³

In the absence of a violation of law or a compilation of standards guiding judicial conduct rendering a judge unfit for office, the judge should be free to make his or her decisions and administer his or her office without facing a disciplinary investigation.⁴ While inefficiency alone may be grounds for disciplining a judge,⁵ failure to promptly dispose of pending matters generally does not warrant judicial discipline, but rather, administrative correction.⁶

The knowing failure to perform adjudicative, administrative, disciplinary, or self-disqualification responsibilities that is persistent and not the result of a disability, may subject a judge to disciplinary action.⁷ Persistent nonperformance of duties, as a basis for the removal of a judge from office, entails a pattern of legal or administrative omissions or inadequacies in the performance of duties and does not entail any intentional disregard of duties.⁸ In any event, a judge who is guilty of a breach of his or her duties or authority, if proper grounds appear, may be subject to discipline.⁹

Good faith is no bar to a finding of a breach of judicial duty¹⁰ nor does it immunize from discipline any conduct that a reasonable prudent and competent judge would consider obviously and seriously wrong.¹¹

A judge may be disciplined or removed for cause,¹² intemperance,¹³ incapacity or incompetency,¹⁴ verbal abuse,¹⁵ physical abuse,¹⁶ or sexual harassment.¹⁷

Others grounds for sanctions include improperly engaging in the practice of law,¹⁸ seeking or holding another elected or appointed office,¹⁹ wrongdoing in an election campaign for judge,²⁰ failure to pay taxes,²¹ and not residing in the elected judicial district.²² A judge's willful retention of office beyond his or her mandatory retirement age is a ground for removal.²³

CUMULATIVE SUPPLEMENT

Cases:

Town court judge violated his ethical duty, warranting his removal, by using his judicial position to interfere in the disposition of his daughter's traffic ticket, and by telling prosecutor that in his opinion and that of his colleagues the matter should be dismissed. 22 NYCRR 100.2, 100.2(A–C). *In re Ayres*, 30 N.Y.3d 59, 63 N.Y.S.3d 737, 85 N.E.3d 1011 (2017).

Judicial Conduct Board could not issue a private reprimand to judge for violating canon of the Code of Judicial Conduct, stating that a judge shall dispose of all judicial matters promptly, efficiently and fairly, and accordingly, Supreme Court would amend Board's sanction to characterize it as a public reprimand; Board's disposition report was necessarily public, undermining the suggestion that the sanction articulated in that report could be private. Code of Jud.Conduct, Canon 3(B)(8). *In re Balivet*, 2014 VT 41, 98 A.3d 794 (Vt. 2014).

[END OF SUPPLEMENT]

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Footnotes

1 La.—*State ex rel. Gremillion v. O'Hara*, 252 La. 540, 211 So. 2d 641 (1968).

2 La.—*State ex rel. Gremillion v. O'Hara*, 252 La. 540, 211 So. 2d 641 (1968).

3 U.S.—*Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Or.—*In re Piper*, 271 Or. 726, 534 P.2d 159 (1975).

Federal judges

Federal judges are "civil officers" within the meaning of a section of the Federal Constitution providing that "all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors."

U.S.—*U.S. v. Claiborne*, 727 F.2d 842 (9th Cir. 1984).

4 N.Y.—*Matter of Mertens*, 56 A.D.2d 456, 392 N.Y.S.2d 860 (1st Dep't 1977).

Okla.—*Nix v. Standing Committee on Judicial Performance of Oklahoma Bar Ass'n*, 1966 OK 264, 422 P.2d 203 (Okla. 1966).

5 Kan.—*Matter of Long*, 244 Kan. 719, 772 P.2d 814 (1989).

- 6 Me.—[In re Holmes](#), 2011 ME 119, 32 A.3d 1011 (Me. 2011).
- N.Y.—[Matter of Greenfield](#), 76 N.Y.2d 293, 558 N.Y.S.2d 881, 557 N.E.2d 1177 (1990) (holding modified on other grounds by, [In re Gilpatric](#), 13 N.Y.3d 586, 896 N.Y.S.2d 280, 923 N.E.2d 563 (2009)).
- 7 Ind.—[In re Hawkins](#), 902 N.E.2d 231 (Ind. 2009).
- Utah—[In re Worthen](#), 926 P.2d 853 (Utah 1996).
- 8 Cal.—[Doan v. Commission on Judicial Performance](#), 11 Cal. 4th 294, 11 Cal. 4th 474a, 45 Cal. Rptr. 2d 254, 902 P.2d 272 (1995), as modified, (Nov. 6, 1995).
- 9 Ind.—[Matter of Boles](#), 555 N.E.2d 1284 (Ind. 1990).
- 10 La.—[In re Wingerter](#), 621 So. 2d 1098 (La. 1993).
- Vt.—[In re Douglas](#), 135 Vt. 585, 382 A.2d 215 (1977).
- 11 Me.—[Matter of Benoit](#), 487 A.2d 1158 (Me. 1985).
- 12 Iowa—[In re Inquiry Concerning Holien](#), 612 N.W.2d 789 (Iowa 2000).
- La.—[In re Bengé](#), 24 So. 3d 822 (La. 2009).
- Mich.—[In re Nettles-Nickerson](#), 481 Mich. 321, 750 N.W.2d 560 (2008).

Conduct not criminal offense

Judicial conduct that in itself does not constitute criminal offense may be violative of standards governing performance, warranting discipline or removal for cause.

N.J.—[Matter of Yaccarino](#), 101 N.J. 342, 502 A.2d 3 (1985).

Unfit judge

Services of an unfit judge may be terminated by removal for cause when misconduct or other dereliction is concerned and by mandatory retirement when unfitness is due to mental or physical disability.

N.Y.—[Quinn v. State Commission on Judicial Conduct](#), 54 N.Y.2d 386, 446 N.Y.S.2d 3, 430 N.E.2d 879 (1981).

13 Idaho—[Idaho Judicial Council v. Becker](#), 122 Idaho 288, 834 P.2d 290 (1992).

14 Mo.—[In re Baber](#), 847 S.W.2d 800 (Mo. 1993).

15 La.—[In re Ellender](#), 16 So. 3d 351 (La. 2009).

S.D.—[In re Fuller](#), 2011 SD 22, 798 N.W.2d 408 (S.D. 2011).

W. Va.—[In re Pauley](#), 173 W. Va. 228, 314 S.E.2d 391 (1983).

A.L.R. Library

Disciplinary action against judge on ground of abusive or intemperate language or conduct toward attorneys, court personnel, or parties to or witnesses in actions, and the like, 89 A.L.R.4th 278.

16 Mich.—[Matter of O'Brien](#), 441 Mich. 1204, 494 N.W.2d 459 (1992).

17 Fla.—[In re McAllister](#), 646 So. 2d 173 (Fla. 1994).

A.L.R. Library

Sexual misconduct as ground for disciplining attorney or judge, 43 A.L.R.4th 1062.

18 N.Y.—*Matter of Intemann*, 73 N.Y.2d 580, 542 N.Y.S.2d 160, 540 N.E.2d 236 (1989).

19 Ala.—*State ex rel. Van Antwerp v. Hogan*, 283 Ala. 445, 218 So. 2d 258 (1969).

N.Y.—*In re Schamel*, 46 A.D.2d 236, 362 N.Y.S.2d 39 (3d Dep't 1974).

20 Fla.—*In re Kinsey*, 842 So. 2d 77 (Fla. 2003).

Misrepresentation of educational background

N.Y.—*In re Shanley*, 98 N.Y.2d 310, 746 N.Y.S.2d 670, 774 N.E.2d 735 (2002).

Misleading campaign advertisements

W. Va.—*Matter of Codispoti*, 190 W. Va. 369, 438 S.E.2d 549 (1993).

21 Ark.—*Judicial Discipline and Disability Com'n v. Thompson*, 341 Ark. 253, 16 S.W.3d 212 (2000).

22 Ind.—*Matter of Evrard*, 263 Ind. 435, 333 N.E.2d 765 (1975).

23 La.—*In re Levy*, 427 So. 2d 844 (La. 1983).

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